IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.128 OF 1997

Jaydeep @ Papya Rajanikant Bhate)
Age 24 years, R/o.Behind 100 Road,)
Jotiram Aakhada, Sangli,)
At present in Katamba Jail,)
Kolhapur.) Appellant
(Org.Accused)

Vs.

The State of Maharashtra.).. Respondent

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Shri N.V.Pradhan with Ms S.D.Khot and Shri S.S.Pednekar for the appellant.

Ms P.H.Kantharia, APP for State.

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CORAM : V.G.PALSHIKAR &

R.C.CHAVAN, JJ

DATED : 12TH JULY, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Taking exception to his conviction for offence punishable under Section 302 of Indian Penal Code and resultant sentence of imprisonment for life and fine of Rs.1,000/- imposed upon him, the accused Jaydeep @ Papya Rajanikant Bhate has preferred this appeal.

2. The appellant came to be prosecuted for murder of one Sapna, a Prostitute. The appellant was

seemingly having a steady carnal relationship with Sapna for quite some time. He used to pick up Sapna from hotel Gandharva at Miraj. On 28th April, 1996, he took her to hotel Elegant at Kolhapur. The accused and Sapna registered themselves as Shri A.R.Patil and Smt.S.A.Patil and were allotted Room No.203 of hotel Elegant. Accused strangulated Sapna to death in course of his stay at the said hotel. On 29th April, 1996, between 7.00 p.m. and 8.00 p.m., accused came to the Receptionist's Desk and handed over key of Room No.203 of the said hotel and told Receptionist not to disturb his female companion who was sleeping in the room. He left after paying for further stay since room was initially booked only for one day.

3. Curiously the accused seems to have gone to police station Sangli City at about 10.30 p.m.. The accused visited the said police station and then disclosed to the Head Constable on duty that he had committed a murder at Kolhapur. Accused informed the officer on duty that dead body was in Room No.203 of Hotel Elegant, Kolhapur. Police Station House Officer H.C.Rajpoot also received from the accused the bills for eatables supplied by the hotel Elegant to the accused. On being informed, Shahupuri Police Station, Kolhapur sent an officer to verify the correctness of telephonic message received from Sangli Police. Dead

body of Sapna was accordingly found in Room No.203 of Hotel Elegant. An accidental death was registered. After performing inquest, dead body was sent for post-mortem examination. An officer was also deputed to Police Station, Sangli City, to bring the accused. A report was lodged by PI Narendra Mahadev Waghmale whereupon, an offence was registered. In course of investigation, police recorded statements of witnesses, seized incriminating articles, had articles examined by Forensic Science Laboratory and on completion of investigation, sent charge sheet to learned Chief Judicial Magistrate, Kolhapur, who committed the case to the Court of Sessions at Kolhapur.

4. The appellant-accused pleaded not guilty to the charge of murder framed by the learned 3rd Additional Sessions Judge, Kolhapur. Hence, he was put on trial.

5. The prosecution examined in all 15 witnesses in its attempt to bring home guilt of the accused. The accused too was examined under Section 313 of Code of Criminal Procedure and took defence of denial. Upon consideration of the prosecution evidence in light of arguments advanced, the learned 3rd Additional Sessions Judge, Kolhapur, held the accused

guilty of murder and sentenced him to undergo imprisonment for life and fine of Rs.1,000/-. Being aggrieved thereby, the present appeal has been filed.

6. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for State. We have gone through the record with the help of both the learned counsel in order to examine the correctness of the findings recorded by the learned trial Judge. P.W.3 Dr.Patil who conducted post-mortem examination was cross-examined about the manner in which the victim died of Asphyxia. According to Dr.Patil, there were no marks of fingers on the throat of the victim and also the ligature mark was oblique making it consistent with the theory of being hanged rather than strangulated by a ligature.

7. The fact that the victim met with death inside Room no.203 of hotel Elegant at Kolhapur is established from the inquest panchanama at Exhibit-16 which was admitted by defence. P.W.9-Nitin Zanpure, who is Receptionist at hotel Elegant, states that on 29th April, 1996, he had received a telephone call from the police who asked his master to go to Room No.203 and see what was to be found. According to him, he accompanied his Master Shri Shripatrao Ghugare to Room No.203 and found body of a woman on the cot.

He states that they closed the door and informed the police on telephone about the same and thereafter police came to the hotel. Thus, the fact that the dead body was found in Room No.203 of hotel Elegant at Kolhapur is duly established.

8. Reverting back to the evidence of P.W.3-Dr.Patil, it may be seen that he had conducted post-mortem examination on 30th April, 1996 between 7.15 a.m. and 8.15 a.m. He had found that the stomach contained partly digested rice meal indicating that the death occurred within 2 to 3 hours of the last meal. Since rigor mortis was absent, death might have occurred, according to Dr.Patil, about 24 hours prior to his examination i.e. before 8.15 a.m. on 29th April, 1996.

9. The victim seems to be a woman of easy virtue. Her husband, P.W.5 Ajit Unhale, himself stated that his wife was a prostitute and used to operate from hotel Gandharva at Miraj. He stated that before and even after the marriage with him, she continued with prostitution.

10. The prosecution examined one Narendra Konkankar, as P.W.4, serving as Manager in hotel Gandharva at Miraj. He too stated that he knew the

victim Sapna @ Laxmi because she used to visit permit room of hotel Gandharva. He stated that Sapna used to stay in the lodge for even two days at a stretch with her customers since about one year before the incident. P.W.4-Konkankar also states that he knows the appellant Jayadeep @ Papya Rajanikant Bhate since he was also a visitor to the permit room in hotel Gandharva. The witness however stated that the appellant never came to the hotel with Sapna and added that he did not remember if he had seen Sapna and appellant together. Thereupon, he was declared hostile and in the cross-examination, stated that he told the police that accused and the victim used to come to the hotel Gandharva together for victim's business of prostitution. He also identified the accused in the Court to be the same person. The witness was cross-examined about the absence of entry and name of the appellant in the hotel register. This is inconsequential, since a person visiting hotel with a prostitute may avoid giving his real name in the hotel register. Curiously in the cross-examination, towards the end, the witness stated that after hearing the news (about death of Sapna), he came to know that the person who used to wander with Sapna, was Jayadeep @ Papya Rajanikant Bhate, i.e. the accused.

11. P.W.6-Sanjay Petkar drives an auto-rickshaw

and ordinarily parks his rickshaw near hotel Gandharva at Miraj. He therefore knew the victim, who used to stay in the permit room of the said hotel Gandharva. He states that he also knew accused Jayadeep because Jayadeep too frequently visited the permit room riding in his auto-rickshaw. He stated that he never saw both accused and the victim coming together to hotel Gandharva but claimed that once or twice, he had taken the victim and the accused by his auto-rickshaw to S.T.stand. It may thus be seen that the victim and the appellant were well known to each other and were presumably enjoying each others company for quite some time before the incident.

12. P.W.2-Shripatrao Ghugare, owner of hotel Elegant, states that on 29th April, 1996, he was present at his hotel and that two customers, male and female, were staying in a room No.203 of his hotel. Since the witness had not stated about events on 28th April, 1996, he was declared hostile and was cross-examined by the learned APP. In course of cross-examination, he contradicted the portions in his police statement regarding arrival of couple at 5.15 p.m. on 28th April, 1996. What the learned APP could not achieve was however achieved by defence counsel, because, in paragraph 7 of cross-examination of this witness, the defence made the witness prove at

Exhibit-22 a bill showing the time of arrival of the couple at 17.15 hours on 28th April, 1996 and time of departure as 12 noon on 29th April, 1996.

13. P.W.7-Govind Kokare, a Waiter at hotel Elegant, also stated that on 28th April, 1996, a male and a female customer checked-in Room No.203 of their hotel. He stated that these customers were in their hotel in the past also and the accused present before the Court was the same customer. The cross-examination of this witness only fortified the conclusion that the accused was the customer who had checked-in Room No.203 on 28th April, 1996.

14. To leave the matter in no doubt, P.W.8-Ganpati Kamble, another Receptionist in hotel Elegant, stated that a couple by name A.R.Patil and S.A.Patil checked-in Room No.203 in their hotel on 28th and 29th April, 1996. The witness however refused to identify the accused as the said person and, therefore, had to be declared hostile. In course of cross-examination by the learned APP, he admitted having stated to the police that he came to know that S.A.Patil was really Laxmi, who used to work as prostitute and A.R.Patil was the accused person i.e. Jayadeep @ Papya Bhate.

15. P.W.9-Nitin Zanpure too was working as

Receptionist at hotel Elegant and stated that on 28th April, 1996, a couple, who checked-in by name A.R.Patil and S.A.Patil, stayed in Room No.203 on 28th April, 1996. He too was reluctant to identify the accused as male customer who checked-in Room No.203 and was declared hostile. Towards the end of cross examination by the learned APP, he however admitted that he came to know that the name of male passenger was not A.R.Patil but was Jaydeep @ Papya Rajanikant Bhate. In cross-examination on behalf of the accused, he went to state that he had never seen the accused prior to his deposition before the Court.

16. Similar is the vacillating version of another Waiter P.W.10-Mahesh Kumbhar working in hotel Elegant. But it may be seen from the evidence of these witnesses that along with the victim, a male passenger, whose name was Jaydeep @ Papya Bhate, had checked-in the hotel on 28th April, 1996 at about 5.15 p.m. The evidence of P.W.4-Konkankar would show that accused was the same person who checked-in Room No.203 with the deceased.

17. P.W.2 Ghugare, owner of hotel Elegant, stated that on 29th April, 1996, at about 9.00 to 9.30 p.m., customer in Room No.203 handed over key to him. He also stated in the cross-examination on behalf of the

accused that the person concerned paid a sum of Rs.400/- to him and accordingly Ghugare passed a receipt. P.W.9-Nitin Zanpure, Receptionist in the hotel Elegant, stated that male customer from Room No.203 came to him on 29th April, 1996 at about 7 to 8 p.m. and handed over key of the said room to him. The witness also informs that the customer told the witness not to disturb "Madam" as she was sleeping in the room. The witness states that the customer gave him money but he did not remember the amount. He states that thereafter customer did not come back.

18. The evidence of P.W.10-Mahesh Kumbhar would show that he reluctantly admits having stated to the police that on 29th April, 1996 at about 7.30 or 8.00 p.m., Jaydeep Bhate asked him to bring rickshaw and accordingly the witness brought auto-rickshaw in which Jaydeep alone went away from hotel Elegant. It is pertinent to note that there is no suggestion to the witness in respect of this statement in the cross-examination on behalf of the accused.

19. In our opinion, this evidence would clearly establish that from 28th April, 1996 till the evening of 29th April, 1996, the appellant and the victim were in Room No.203 of hotel Elegant at Kolhapur. The victim was possibly killed before the morning of 29th

April, 1996 and within 2-3 hours of last meal as could be seen from medical evidence. The appellant was in the said room till he left it on the evening of 29th April, 1996. This evidence of victim alone having been seen last together in the company of the appellant and the absence of possibility of any one else having access to the said room would clearly indicate involvement of the appellant in murder of the victim. Speculation about motive to commit murder is unwarranted because there was no third person in the room in question. The victim and accused had entered the room alive and the accused alone came out alive from the room. Therefore, this evidence is adequate to hold that the learned Trial Judge was right in concluding that the accused had murdered the victim.

20. Learned counsel for the appellant has raised some questions pertaining to a statement made by the appellant before P.W.12-S.C.Rajput of Sangli City Police Station. It may be seen that according to the prosecution, the accused went to police station, Sangli City, at about 8.30 p.m. on 29th April, 1996 and informed the officer in-charge about the murder committed by him. The officer recorded his statement and asked the police station Shahupuri at Kolhapur to check up at the place where the murder was allegedly said to have been committed. Learned counsel for the

appellant wondered as to how after leaving Kolhapur at about 9.00 to 9.30 p.m., the appellant could have reached Sangli City Police Station, at about 10.30 p.m. First, it may be seen that time of 9.30 p.m. comes from P.W.2 Ghugare, owner of hotel Elegant, who would naturally be interested in protecting reputation of his hotel as well as that of his customers. His reluctance in going along with the prosecution can be seen from his evidence. P.W.9-Zanpure states that accused had come to him at about 7 to 8 p.m.. It may also be seen that the Waiter P.W.10-Kumbhar stated that at about 7.30 to 8.00 p.m. Jaydeep had asked him to bring auto-rickshaw. Thus, appellant left the hotel by 8.00 p.m. and not 9.30 p.m. as stated by Ghugare. Considering the distance between Sangli City and Kolhapur, arrival of accused at the police station, Sangli City at about 10.30 p.m. is perfectly possible.

21. There is no question of the confessional statement recorded by P.W.12-S.C.Rajput at Exhibit -37 being put to any use at the trial. Learned counsel for the appellant rightly submitted that the decision of the Supreme Court in **Aghnoo Nagesia v. State of Bihar,** reported in **1966 Cri.L.J. 100** rules out putting such a statement to any use. In that case too, the FIR was lodged by the accused himself. The

court considered the possibility of severing confessional and non-confessional statements but then came to conclude that severability test was misleading and the entire confessional statement was hit by Section 25 of the Evidence Act, if it is made to a police officer. As regards the statement made while in custody of police, the court observed, save and except as provided by Section 27 of the Evidence Act, no part of such statement could be tendered in evidence. Though at the time of launching a report, there was no question of accused being in custody, which is one of the requirement of Section 27 of the Evidence Act, the Court held that for the purpose of the case, they would assume that the appellant was constructively in police custody and therefore the information contained in the first information report leading to the discovery of the dead body and the tangi was admissible.

22. In the case at hand, all that the learned Trial Judge had done is to put the statement at Exhibit-37 only to that limited use. It may be seen that the accused had the exclusive knowledge that the body of victim was in Room No.203 of hotel Elegant at Kolhapur and without his informing it may not have been possible to discover body though, sooner or later, people would have learnt of it independently.

It may however to be seen from the chronology of events that immediate disclosure to Sangli Police Station and communication by Sangli Police Station to Shahupuri Police Station, Kolhapur, lends a ring of credibility to the story.

23. Learned counsel for the appellant wondered as to why in the circumstances the police station at Shahupuri was required to make a station diary entry of an accidental death before proceeding to perform inquest on dead body. It is true that upon receipt of information from Sangli Police, PI Waghmale, P.W.-15 had directed registration of an accidental death. It may have been a mistake on the part of PI Waghmale to register an accidental death when there was concrete information that murder had taken place. However, that in itself cannot lead to any doubt being cast on the evidence. In this case, registration of an accidental death may have been a step which PI Waghmale felt proper at the relevant time. It does not appear to be a part of any unscrupulous machination, But even in case of such unscrupulous machination on the part of investigating machinery, the Hon'ble Apex Court has observed that the court should not be influenced by such machinations demonstrated by the investigating officers conducting investigation or preparing records unscrupulously. In

State of Karnataka v. K.Yarappa Reddy, reported in (19998 SCC 715, the Apex Court observed in para 19 as under:-

> "But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case ? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously ? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and preeminence in criminal trials over the action taken by investigating officers.

> Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."

24. In view of this, it is not possible to attach any significance to the registration of accidental death by Shahupuri Police Station though they had concrete information about the murder.

25. Learned counsel for the appellant urged that in a case based on the circumstantial evidence, it would be necessary to establish a chain of circumstances indicating complicity of the accused in the crime. He contended that in this case, there was only one circumstance viz. the parties being last seen together which, according to him, was not enough to conclude about complicity of the accused. It is true that in this case, there is no indication as to why the accused should have taken such a drastic step, though speculations in this regard had been aired in course of trial. However, circumstances brought on record viz. that the parties were enjoying carnal pleasure for quite some time, that they had checked-in

Room No.203 in hotel Elegant at Kolhapur on 28th April, 1996, that none else had opportunity to enter into the said room till the accused left it on 29th April, 1996, that the accused told the Receptionist at hotel not to disturb his female companion, and lastly that the accused made a disclosure before Sangli Police Station about the location of dead body and recovery of dead body from the said Room No.203 in consequence of this disclosure, conclusively complete the chain of circumstances. True it is, that in a case raising on a circumstantial evidence, the prosecution has to establish a chain of circumstances unmistakably pointing out to guilt of the accused, but law does not prescribe that chain must have any minimum number of links. The chain can be short as well as long, with a few or many links. All that the law requires is that all the links must be firmly established and the chain in itself should be complete to leave no way for the accused to escape. In our opinion, the circumstances established in this case unmistakably pointing out complicity of the accused in murder of Sapna @ Laxmi.

26. We therefore see no reason to differ with the conclusions drawn by the learned Additional Sessions Judge, Kolhapur. The sentence imposed upon the appellant also does not call for any interference.

Hence, the appeal is dismissed. The appellant is directed to surrender to his bail before the learned Additional Sessions Judge who shall then take steps to commit the appellant to prison to serve out the rest of his sentence.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)